Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/29556/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 24th July 2014	**On 7th August 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE HARRIES

Between

MR REXFORD SIMON OPPONG
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Ahmed, Counsel
For the Respondent: Miss A Everett, Home Office Presenting Officer

DETERMINATION AND REASONS

The Appellant and Proceedings

1. The appellant was born on 22nd April 1960 and is a national of Ghana. He appealed before First-tier Tribunal Judge Nightingale (the Judge) at Hatton Cross on 19th March 2014 against the decision of the respondent to remove him from the United Kingdom following the refusal of his application for leave to remain on grounds of long residence or Article 8 human rights. The Judge dismissed the appeal under the Immigration

Rules and on Article 8 human rights grounds in a determination dated 20th March 2014.

2. After an initial refusal in the First-tier Tribunal of permission to appeal to the Upper Tribunal permission was granted to the appellant on 4th June 2014 by Upper Tribunal Judge Coker. The matter accordingly came before me for an initial hearing to determine whether the Judge's decision involved the making of an error on a point of law.

Issues Under Appeal and Submissions

3. The central issue before the Judge was the length of the appellant's residence in the United Kingdom. The respondent refused the application because the appellant failed to provide evidence of lawful entry into the United Kingdom and Home Office records did not substantiate his claim to have arrived most recently in the united Kingdom in 1998; the appellant had stated in a previous application for an EEA residence card that he arrived in the United Kingdom on 17th January 2008, although he subsequently claimed this was an error.

4. The relevant findings of the Judge flow from the evidence of the appellant set out in paragraph 14 of the determination recording the appellant's evidence that he worked for Morson International and also for North Star Limited. He relied on payslips for this employment showing tax deducted but he had been told that HMRC had no record of his registration for tax purposes with these companies and no tax had been received by HMRC. The appellant stated that he had contacted HMRC himself to obtain tax records from 1998 to date but he was told that they could only be provided from 2007 to the present date.

5. In paragraph 39 of her determination the Judge make a finding that the appellant had been in the United Kingdom prior to January 2008; she accepted that he had been in the United Kingdom continuously since May 2007. In paragraph 40 of her determination the Judge considered the appellant's evidence of employment including that with a third employer, Ocean Contract Cleaning, from 1998. However, there was no record with HMRC of PAYE tax being deducted by this third employer. The Judge could find no explanation for three separate employers failing to register the appellant for tax, or to pay tax deducted to HMRC.

6. The Judge reminded herself that the onus was upon the appellant to prove his case and to provide the necessary evidence; she found that he could easily have provided supporting evidence of his employment and his failure to make "even the most basic attempt to do so" led her to adverse credibility conclusions. The Judge's findings about the appellant's lack of evidence of his history of employment contributed to her dismissal of the appeal but did not represent the totality of her adverse findings.

7. Permission to appeal to the Upper Tribunal was granted on the grounds that it was arguable that had the Judge been aware that HMRC do not keep records beyond 7 years this might have affected the weight she gave to other elements of the evidence; this was, however, with the proviso that whether such information is in the public domain may be open to question.

8. Mr Ahmed's submissions to me for the appellant were that the Judge had materially erred in law in her assessment of the evidence relating to HMRC records. He relied on new evidence, not before the First-tier Tribunal, which he claimed supplemented the HMRC evidence relied upon by the respondent. The evidence in question appears at page 269 of the appellant's additional bundle and consists of a copy letter from HMRC, dated 14th December 2011, sent in response to a question posed through Freedom of Information. The document was sourced from the internet but not from the HMRC website. It was addressed to an unknown person, Mr McGatland, who had asked for how long HMRC keep personal income records before they are destroyed. The core of the correspondence relied upon by Mr Ahmed states as follows:

> "The former Inland Revenue had a standardised retention period set at up to a maximum of nine years plus the current year. HMRC has reduced this to six years plus current for direct and indirect taxes information. HMRC therefore currently retains records from the 2005-06 tax year onwards. There are exceptions to this and these are set out in policies for the relevant business streams."

9. This correspondence was submitted by Mr Ahmed to show that the HMRC practice in relation to record-keeping is information in the public domain which the Judge should have taken into account; she should have taken account of HMRC not retaining records for more than 6 years. The Judge is further submitted to have placed undue reliance upon evidence from the respondent consisting of a statement from Mr Andrew Underhill of HMRC about the lack of records held about the appellant's tax affairs. It is submitted for the appellant that this person was not present and could not be questioned about his evidence; the computer records could not be examined.

10. Mr Ahmed further submitted that at paragraph 44 of the determination the Judge accepted that the appellant had been seen by one of his witnesses in the United Kingdom since 1998 and this should have carried greater weight in the Judge's deliberations; on balance she should have found him to be continuously present in the United Kingdom from that date.

11. In response Miss Everett stated that although the new evidence in the form of correspondence is from the internet it is questionable whether this shows an HMRC policy within the public domain; she queried the sufficiency of the letter for this purpose. She submitted that the record-keeping issue had not been live in the First-tier before the Judge

and her findings went beyond this issue, for instance in relation to a lack of evidence of National Insurance which might have been relied upon by the appellant.

12. I announced my finding at the hearing, with brief reasons, that in my judgment the decision of the Judge does not disclose any error of law. My full reasoning is set out below.

My Findings

13. I am satisfied that the Judge made no error of law in making her decision. I find that she reached conclusions which were properly open to her and that they were supported by valid reasons. I am not satisfied that the evidence set out above shows the existence of a policy of HMRC in the public domain which should have been taken into account by the Judge, notwithstanding its absence before her. The information does not come from the HMRC website but in response to a question asked in another forum. The letter is addressed to a person with no connection to the appellant whose situation may have been entirely different. The letter is dated December 2011 and contains information which may not necessarily have been applicable at the relevant date for the Judge's deliberations and the information is stated to be subject to exceptions.

14. If I found that the Judge erred by failing to take account of such evidence, which I do not, I would further find that such error was not material in the light of the determination read as a whole. The Judge correctly directed herself that the burden of proof was upon the appellant; I am satisfied that the appellant's failure to discharge this burden led to the dismissal of his appeal and not any undue reliance placed by the Judge on evidence from the respondent's witness.

15. At paragraph 38 of the determination the Judge made clear that she had considered all the evidence in the round. Aside from the issue of HMRC records, the Judge found that the maintenance by the appellant of a bank account in the United Kingdom from or before 1998 did not show his presence in the United Kingdom from 1998; she had concerns as to who exactly might have been operating the account, including purported payments into it from employment.

16. The Judge considered the oral evidence from the appellant's witnesses and expressed considerable concern about the lack of supporting evidence of their immigration status in the United Kingdom; there was no copy of a passport for one witness and the other witness had made no written statement in advance of the hearing. I am satisfied that the Judge's finding that the appellant may have been in the United Kingdom in 1998 discloses no error as she clearly states that the evidence does not show residence from then to have been continuous. She made allowance for the childhood memories of one witness, who

claimed to have seen the appellant from then onwards, being potentially deceptive.

17. The Judge had concerns, set out in paragraph 45 of her determination, about the appellant's evidence relating to his addresses in the United Kingdom. She could see no reason, had he been genuinely married, for him to maintain a different address from his wife, which was his evidence. The Judge doubted the marriage to have been genuine; although it was not now in issue it was relied upon in the previous EEA residence card application by the appellant. In paragraph 40 of the determination the Judge took account of the appellant's failure to provide evidence he might easily have obtained including evidence from any of his three employers, the DWP or other evidence of national insurance contributions. He did not contact the Ghanaian embassy to show that he held a Ghanaian passport at the time he claims to have entered the United Kingdom.

18. The Judge found the totality of the appellant's evidence to fall below the required standard and before reaching her final conclusions she took account, in paragraph 49 of her determination, of the appellant's illegal entry into the United Kingdom previously, his clear contacts with people able to facilitate such illegal entry and more likely than not illegal exit as well. She took account of the appellant's own disregard for the immigration laws of the United Kingdom.

19. Taking account of all these matters I am satisfied that the making of the decision did not involve the making of any material error on a point of law. I find that no other grounds of challenge to the Judge's decision show that she made any error of law but amount to no more than a continuing disagreement with her findings.

Decision

20. I find that the making of the decision in the First-tier Tribunal did not involve the making of a material error on a point of law and it follows that the Judge's decision stands and this appeal to the Upper Tribunal is dismissed.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. There is no application or information before me to show any change to that position to be required.

Signed : J Harries

Deputy Upper Tribunal Judge
Dated 3rd August 2014

Fee Award

The position remains that there is no fee award.

Signed: J Harries

Deputy Upper Tribunal Judge
Dated 3rd August 2014